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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection Between Local) CC Docket No. 95-185
Exchange Carriers and Commercial)
Mobile Radio Service Providers)

To: The Commission

REPLY COMMENTS

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Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Reply Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") adopted by the Commission on December 15, 1995 and released on January 11, 1996 and the subsequent Order and Supplemental Notice of Proposed Rulemaking ("Supplemental NPRM") adopted and released by the Commission on February 16, 1996.

In its Comments, PRTC urged the Commission to revisit its proposals regarding interconnected traffic between the networks of local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers in light of the provisions of the Telecommunications Act of 1996. The proposals outlined in the NPRM are inconsistent with the new statutory scheme. Rather than attempt to conclude this proceeding separately from the Commission's general interconnection proceeding contemplated for April 1996, PRTC urged the Commission to consider combining the two proceedings to implement more efficiently the requirements of this sweeping new law.

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Many commenters share this view. For example, GTE describes the provisions of the Telecommunications Act of 1996 that establish voluntary negotiations as the principal means for setting interconnection terms and conditions.¹ BellSouth Corporation notes Congress' careful grant of authority over interconnection negotiations to States and the corresponding review of any State actions by Federal district courts — not the Commission.² The Public Utilities Commission of Ohio highlights the Commission's duty under the Act not to interfere with State regulations that are consistent with the requirements of the section 251 and to arbitrate interconnection negotiations only when States fail to perform their duties under section 252.³

At bottom, the authority delegated to the Commission by Congress comprehends state regulation of the various interconnection rights and duties called out in new section 251. Insofar as that state regulation is consistent with the requirements of section 251 and does not substantially prevent implementation of the requirements of that section, the Commission may not interfere with it. Thus, the Commission

1. Comments of GTE Service Corporation at 7-10.

2. Comments of BellSouth Corporation at 9-10.

3. Comments of the Public Utilities Commission of Ohio at 9.

should not establish detailed Federal CMRS interconnection rules. Like the many other commenters in this proceeding, PRTC urges the Commission to permit the States to guide the specific telecommunications policy matters left for them by Congress.⁴ The Commission should combine this proceeding with the more generic interconnection proceeding scheduled for April 1996 and, consistent with the requirements of new section 251, craft broad interconnection guidelines that will not interfere with consistent State regulations.

Some commenters, however, argue that the Telecommunications Act of 1996 permits the Commission to establish mandatory Federal CMRS interconnection rules. For example, Sprint Corporation writes, "Nothing in the Telecommunications Act of 1996 modified the preexisting provisions of the Act that gave the Commission jurisdiction over [CMRS] interconnection. Therefore the enactment of this legislation has no impact on the tentative conclusions set forth in the NPRM."⁵ Similarly, Airtouch Communications, Inc. maintains that "the Commission is correct in

4. See Comments of Ameritech at 12; Bell Atlantic at 14; BellSouth Corporation at 8-9; GTE Service Corporation at 43; National Telephone Cooperative Association at 4-6; NYNEX Companies at 43; Pacific Bell et al. at 92-96; Public Utilities Commission of Ohio at 4; SBC Communications Inc. at 7; United States Telephone Association at 15-16; and U S West, Inc. at 59-60.

5. Comments of Sprint Corporation at 15.

its assertion in the NPRM that it may preempt state regulatory authority over LEC-CMRS interconnection."⁶ This is not the case, however.

As PRTC demonstrated in its initial comments, the provisions of the Telecommunications Act of 1996 render the proposals in the NPRM dramatically out of step with the legal environment to be faced by LECs and CMRS providers in the wake of the Commission's April 1996 proceeding. As a threshold matter, separate interconnection policies for LEC-CMRS interconnection on one hand and non-CMRS interconnection on the other would run counter to the requirements of new sections 251 and 252. Section 251(c)(2)(D) establishes the duty of all incumbent LECs to provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . ." and section 252(i) requires LECs to provide "any interconnection" under a negotiated agreement to all takers. Plainly, a Commission policy of establishing competitively advantageous (or disadvantageous) interconnection rights for CMRS providers alone would be unworkable under the new regime.

More fundamentally, however, Congress left a great many issues to be decided by the States in the context of arbitrating

6. Comments of Airtouch Communications, Inc. at 55.

interconnection agreement disputes,⁷ establishing interconnection rates,⁸ and approving Bell operating company statements of generally available terms.⁹ Beyond establishing broad Federal regulations to guide State decisions, the Commission may become involved only to take jurisdiction over interconnection negotiations where a State fails to act.¹⁰ Mandatory Federal regulations preempting State authority before States have had an opportunity to act would not be consistent with the intent of Congress.

This is particularly evident in connection with the Commission's interconnection pricing proposals. New section 252(d)(1) of the Act requires non-negotiated interconnection compensation to be cost-based. In other words, although negotiating parties may waive mutual compensation,¹¹ neither the Commission nor a State commission may dictate compensation on anything other than a cost-basis. Moreover, new sections 252(c)(2) and 252(d) provide that State commissions — not the FCC — are to "establish any rates for interconnection." Thus, the

7. New sections 252(b), 252(c), and 252(e).

8. New sections 252(c)(2) and 252(d).

9. New section 252(f).

10. New section 252(e)(5).

11. New section 252(d)(2)(B).

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Commission's interconnection policies must leave this role to the State commissions.

Accordingly, if a State commission altogether fails to perform its section 252 duties of arbitrating interconnection agreement disputes, establishing interconnection rates, and approving Bell operating company statements of generally available terms, the Commission could take jurisdiction of those matters under section 252(e)(5). Until then, however, the Commission has no authority to establish interconnection rates, or to mandate general interconnection terms on anything other than a cost-basis. To do so would be in plain contravention of the terms and spirit of the new law.

Nevertheless, some commenters argue that the continued "vitality" of section 332(c)(3) alters this analysis.¹² Section 332(c)(3) of the Communications Act preempts State authority to "regulate the entry of or the rates charged by any commercial mobile service" ¹³ Airtouch asserts that this "unequivocal preemption of state regulatory authority over entry of intrastate CMRS providers must be interpreted to preclude actions by states, including those involving interconnection,

12. See Comments of Airtouch Communications, Inc. at 54.

13. 47 U.S.C. § 332(c)(3)(A).

that would serve to inhibit entry."¹⁴ From this, Airtouch concludes that the Commission "may preempt state regulatory authority over LEC-CMRS interconnection" pursuant to section 332(c)(3).¹⁵ That is not the case.

It is well established that an Act "cannot be held to destroy itself"¹⁶ and "it is a commonplace of statutory construction that the specific governs the general"¹⁷ In the Telecommunications Act of 1996, Congress granted to States considerable authority to oversee interconnection within their borders and carefully delineated the circumstances in which the Commission is to become involved in that supervision. That Congress also left untouched section 332(c)(3) — and added new section 253 prohibiting State barriers to entry — cannot reasonably be read to upend the authority Congress granted to the States in section 251 and 252.

14. Comments of Airtouch Communications, Inc. at 54.

15. Id. at 55.

16. Nader v. Allegheny Airlines, Inc., 426 U.S. 290, 299 (1976) (quoting Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 446 (1907)).

17. Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992).

Instead, retaining the preemption of State CMRS entry regulation¹⁸ and prohibiting State barriers to entry for all services¹⁹ is consistent with new Act's scheme of assigning specific roles to the Commission and to the States on interconnection matters. Although Airtouch divines from this structure Commission jurisdiction immediately "to preempt state regulatory authority of LEC-CMRS interconnection," it appears from sections 251 and 252 that Congress intended for the Commission to establish general interconnection guidelines and for States to address the details of proposed interconnection agreements — including the prices to be charged for interconnection.²⁰ The same limitations that circumscribe State authority to regulate and arbitrate, however, also direct the Commission not to interfere with State regulation that is consistent with section 251²¹ and not to review an interconnection agreement unless a State fails to act.²²

In short, the proposals outlined in the NPRM are inconsistent with the new statutory scheme. The authority

18. 47 U.S.C. § 332(c)(3)(A).

19. New section 253.

20. New section 252(c)(2) & (d).

21. New section 251(d)(3).


22. New section 252(e)(5).

delegated to the Commission by Congress comprehends state regulation of the various interconnection rights and duties called out in new section 251. Thus, the Commission should not establish detailed Federal CMRS interconnection rules. Like the many other commenters in this proceeding, PRTC urges the Commission to permit the States to guide the specific telecommunications policy matters left for them by Congress.

CONCLUSION

For these reasons, PRTC urges the Commission to revisit its LEC-CMRS interconnection proposals in the context of a more comprehensive proceeding to implement the requirements of the Telecommunications Act of 1996.

Respectfully submitted,



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